

In June 1999, claimant began working for Country Kitchen. On September 11, 1999, claimant experienced upper back pain while lifting boxes full of groceries off of a truck and putting them in refrigerators and freezers. Claimant completed her shift but then went to

the emergency room. The emergency room record makes reference to an earlier back injury, mentions moving two and one-half weeks earlier, states claimant has had back spasms off and on since, mentions that claimant was on her feet all day at work, and then indicates the symptoms have become worse. After the emergency room visit, claimant treated with Dr. Dan G. Severa. Dr. Severa took claimant off work. Claimant has not been able to work since and was hospitalized in October 1999.

Based on claimant's testimony, testimony that is not contradicted by other evidence in the record, the Board finds claimant injured or aggravated her previous injury in September 1999 as a result of work she was doing for respondent Country Kitchen. Although the emergency room record suggests claimant may also have injured her back during a personal move, the record still supports the claim that the injury became worse as a result of her work activities. The Board, therefore, affirms the decision of the ALJ to award preliminary hearing benefits to be paid by respondent Country Kitchen and its insurance carrier.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on January 12, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
James B. Biggs, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director